

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K04-S-84**

RICHARD D. PANTOJA

APPELLANT

V.

ORDER NO. K-19332

**JEFFERSON COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals has delegated authority to the hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on January 5, 2005 in Louisville, Kentucky and made the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property located at 1562 South Shelby St., Louisville in Jefferson County. The Jefferson County Property Valuation Administrator assessed the property at \$78,410.00. The taxpayer or Appellant values the property at \$65,000.00. The Jefferson County Board of Assessment Appeals valued the property at \$78,410.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellant offered the following evidence in support of Appellant's appeal:

Mr. Pantoja offered four comparable sales of duplexes to his property, which totals 2,040

square feet. The first comparable was 938 Charles Street (2,060 square feet, sold for \$65,000 on August 20, 2002). The second comparable was 1010 South Jackson Street (1925 square feet, sold for \$61,000 on July 20, 2004). The third comparable was 513 Camp Street (1,800 square feet, sold for \$63,500 on December 31, 2004). The fourth comparable was 822 Milton Street (1,789 square, sold \$53,900 on August 27, 2003).

Mr. Larry Osterhage of the Jefferson County Attorney's Office represented the PVA. Mr. Osterhage cross-examined Mr. Pantoja. During the cross examination, Mr. Pantoja noted the 1562 Shelby Street building is a two-year-old structure (2003). Mr. Pantoja confirmed the 1010 South Jackson Street comparable is 96 years old, the 513 Camp Street comparable is 103 years old, and the 822 Milton Street comparable is 103 years old.

Ms. Patricia A. Belt testified as a "research and development" employee at the Jefferson County PVA office. She noted the subject property (1562 Shelby Street) is a two-story duplex with two full bathrooms, no garage, no basement and with a new value of \$91,500.00.

Ms. Belt introduced some comparables to the 1562 Shelby Street duplex by introducing 707 East Burnett Avenue (built in 1910, 1,920 square feet, sold for \$65,000), 733 East Oak Street (built in 1900, two story 2,034 square feet, sold for \$89,900), 631 East St. Catherine Street (built in 2002, two story duplex with two full baths and no garage, 2,010 square feet, sold for \$117,800).

Through cross-examination, Ms. Belt noted the 631 East St. Catherine Street is less than a mile from the property and in the "same neighborhood" of Neighborhood 144. Mr. Pantoja referred his property to being in the Shelby Park neighborhood while the East St. Catherine Street comparable is in Germantown. Mr. Pantoja paid \$4,600 for the lot, but could not give the hearing officers a cost estimate or figure regarding insurance for the Shelby Street property. Mr.

Pantoja noted he rented one of the two units for \$695 monthly. Ms. Belt noted the building was listed as “low-grade construction”, meaning, “using inferior materials other than a higher grade of construction” with a value of \$91,500.

It is the finding of this hearing that the Appellant did not sustain his burden of proof regarding his challenge to the final order of the Jefferson County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of hearing officers, Ms. Nancy Mitchell and Bill Beam, Jr. the fair cash value of the property in question as of January 1, 2004 is \$78,410.00.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Jefferson County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Jefferson County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Jefferson County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officers conclude that the fair cash value of the subject property as of January 1, 1004 is \$78,410.00.

RECOMMENDED ORDER

It is recommended that the July 23, 2004 final ruling of the Jefferson County Board of Assessment Appeals be upheld and the real property be assessed at a fair cash value of \$78,410.00 as of January 1, 2004.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file

exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The July 23, 2004 final ruling of the Jefferson County Board of Assessment Appeals is sustained and the real property is to be assessed at a fair cash value of \$78,410.00 as of January 1, 2004.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: May 25, 2005**

FULL BOARD CONCURRING

**NANCY MITCHELL
CHAIR**

